

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2913 of 2006

The Chairman, Jogeswari Kelwani Mandal & anr.	Petitioners
Vs.	
Smt.Ranjan M. Parikh & ors.	Respondents

Mr.Sureshkumar J. Panicker with Mr. A.V. Sathe and
Ms. Pallavi Vishwasrao for petitioners.

Mr.M.P.Vashi i/b M/s.M.P. Vashi & Associates for
Resp.No.1.

Mr.M.H.Solkar, AGP for Resp. Nos.4 & 5.

CORAM: B.H.MARLAPALLE,J.

August 28, 2006.

P.C.

1. Heard Mr.Panicker, the learned counsel for the
petitioners and Mr.Vashi, the learned counsel for the
respondent - teacher. Respondent nos. 2 and 3 are
not the necessary parties and they be deleted
forthwith. The learned AGP appears in the remaining
remaining respondents.

2. The respondent was working as Head Mistress at
the relevant time and she was issued a show cause
notice on 3/10/1997 followed by the charge-sheet
dated 24/2/1998. She was placed under suspension
from 20/11/1997 onwards. A departmental enquiry was
instituted against her and the enquiry committee

submitted its report based on which dismissal order
 dt. 13/4/1998 was issued. The respondent,
 therefore, approached the School Tribunal in Appeal
 No.49 of 1998.

3. The said appeal was initially allowed by the
 order dated 16/9/2005 and the dismissal order dated
 13/4/1998 was quashed and set aside with a further
 direction to reinstate the respondent no.1 in the
 post of Head Mistress and to hold de novo enquiry by
 constituting a fresh enquiry committee. It was
 further directed that the respondent no.1 will remain
 suspended till the fresh enquiry and the outcome
 thereon was pronounced. This order came to be
 challenged by the Respondent - Head Mistress in Writ
 Petition No.7813 of 2005 and the petition was
 disposed off on 21/12/2005. The order passed by the
 School Tribunal on 16/9/2005 came to be quashed and
 set aside and the appeal was remanded to the Tribunal
 for fresh decision by following the law laid down in
 the case of U.P. State Textile Corporation Ltd. v.
 P.C. Chaturvedi & ors. **[(2005) 8 SCC 211]**.
 Accordingly by the impugned judgment and order dated
 28/2/2006 the appeal was heard and decided afresh and
 has been allowed by setting aside the termination

order dated 13/4/1998. The petitioner - management has been directed to reinstate the Head Mistress with continuity of service and backwages from the date of termination.

4. On remand the School Tribunal framed the following issues:

"(1) Whether the Inquiry Committee is constituted as per the provisions of law?

(2) Whether the Inquiry is conducted as per the procedure laid down under Rule 37?

(3) Whether the Inquiry conducted against Appellant is fair, proper and by following principles of natural justice?

(4) Whether the management led sufficient evidence before Inquiry Committee to prove charges against appellant?

(5) Whether the findings of Inquiry Committee are perverse and unsustainable?

(6) Whether the termination order dated 13-4-1998 is liable to be set aside."

. The first four issues were answered against the management and it was held that the findings were perverse and unsustainable. Consequently the dismissal order could not stand the test of law. The Tribunal held that the enquiry committee constituted was not as per the law and the enquiry was not conducted by following the procedure laid down under Rule 37 of the MEPS Rules, 1981 and, therefore, it could not be called a fair and proper enquiry and the enquiry was in breach of the principles of natural justice.

5. A copy of the enquiry proceedings and the findings of the enquiry committee have been placed before me and I am satisfied that no fault could be found with the view taken by the School Tribunal. It is also observed that in the enquiry committee representative of the delinquent teacher did not find place and the respondent herself appeared. The findings of the enquiry committee have not been supported by any reasons nor any evidence has been

considered. The findings are solely based on the so called interview of four teachers conducted by Mr. Sahastrabuddhe (An Awardee Teacher).

6. Even though the committee constituted was not in keeping with the Rules and the findings recorded by the said enquiry committee did not prove the charges, the right of the management to conduct a fresh enquiry does not come to an end only because the order of dismissal has been quashed and set aside after holding the enquiry to be vitiated. In the case of U.P. State Textile Corporation Ltd. (Supra) Their Lordships had referred to the earlier decision in the case of Managing Director, ECIL, Hyderabad & ors. v. B. Karunakar & ors. **[1993 (4) SCC 727]** and reproduced some of the findings therein in para 17. The following observations are relevant for our consideration:

"...Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority / management to proceed with the inquiry, by

placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

7. In the instant case the Tribunal has held that

the enquiry committee constituted was illegal and the findings recorded by the said committee were not supported by any evidence and, therefore, the management will have to constitute the enquiry committee first in case it still decides to proceed with the charge-sheet and this liberty cannot be taken away. To that extent the impugned order requires further clarifications.

8. Hence the petition is disposed off by

clarifying that the management is at liberty to conduct a de novo enquiry into the charges levelled as per the charge-sheet dated 24/2/1998 by constituting a fresh enquiry committee as per the Rules and the said enquiry committee shall also comprise the nominee of the delinquent teacher and the name shall be intimated to the management by the respondent No.1 by 31st August, 2006. The enquiry proceedings shall be completed as expeditiously as possible and in any case within a period of three months from 1st September 2006. A copy of the enquiry committee's findings shall be made available to the respondent within one week from its submission

and the teacher will submit her explanation / reply to the said findings and in any case the final decision in regard to the said findings shall be taken by 31st December 2006. The order of reinstatement is not disturbed. The issue of payment of backwages will be subject to the final decision in the enquiry to be conducted de novo.

(B.H.MARLAPALLE,J.)